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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,494	07/25/2003	Rodney C. Hope	716909.26	1493
27128	7590	09/22/2006	EXAMINER	
BLACKWELL SANDERS PEPPER MARTIN LLP			RIVELL, JOHN A	
720 OLIVE STREET			ART UNIT	PAPER NUMBER
SUITE 2400				3753
ST. LOUIS, MO 63101				

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SJR

Office Action Summary	Application No.	Applicant(s)	
	10/604,494	HOPE ET AL.	
	Examiner	Art Unit	
	John Rivell	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 July 2006.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 1-6,8-16,18-20 and 22-30 is/are allowed.
 6) Claim(s) 7,17 and 21 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

Claims 1-30 remain pending.

Applicant's arguments filed July 31, 2006, regarding claims 7, 17 and 21 have been fully considered but they are not persuasive.

The declaration under 37 CFR 1.132 filed July 31, 2006 is insufficient to overcome the rejection of claims 7, 17 and 21 based upon 35 U.S.C. §103(a) as being obvious over Cunningham in view of Raymond as set forth in the last Office action because: the evidence of commercial success based on total gross sales does not show commercial success of a nature to overcome the current rejection. For example, M.P.E.P. §716.03(b), IV states:

"IV. SALES FIGURES MUST BE ADEQUATELY DEFINED"

Gross sales figures do not show commercial success absent evidence as to market share, *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985), or as to the time period during which the product was sold, or as to what sales would normally be expected in the market, *Ex parte Standish*, 10 USPQ2d 1454 (Bd. Pat. App. & Inter. 1988)."

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the

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obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7, 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham (cited by applicant) in view of Raymond.

The patent to Cunningham, in figure 7, discloses a "self closing valve comprising: a valve body (generally at 36D) having flow passage therethrough; a metal valve seal... having first and second sealing surfaces (at fingers 42D, 43D) disposed within the valve body about a portion of the flow passage; a valve member (34D) mounted within the flow passage for movement between an open position and at least one of at least two closed positions, the valve member having a seating surface (48D) for engagement with at least one of the sealing surfaces of the metal valve seal ring in at least one of the closed positions; a biasing element (spring 36 of figure 1) associated with the valve member for urging the valve member toward the closed positions; and the metal valve seal... being formed... having first and second annular fingers (at fingers 42D, 43D) extending radially inwardly of the flow passage portion to provide first and second sealing surfaces spaced apart along the longitudinal axis of said portion of the flow passage" as recited in claim 7.

Thus the patent to Cunningham discloses all the claimed features with the exception of having the seal elements at fingers 42D, 43D in the form of an "annular ring" element and having the "first and second sealing surfaces each being coined to each provide a surface portion for mating with a respective portion of the seating surface for selective sealing engagement therewith when the valve member is in a respective at least one of the closed positions".

Firstly, the patent to Cunningham, in figures 2 and 3 for example, teaches two distinct embodiments of the valve seal in which the seal is in the form of an "annular

ring" at 42 in fig. 2 and 42A in fig. 3, for the purpose of permitting the seal element to be replaced and/or repaired in the event its useful life expires.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in the embodiment of figure 7 of Cunningham, an annular seal element carrying seal "fingers 42D, 43D for the purpose of permitting repair and/or replacement of the seal element in the event its useful life expires as recognized by the embodiments of figures 2 and 3 of Cunningham.

Secondly, the patent to Raymond discloses that it is known in the art to employ a "coining" operation during assembly of a plural seating check valve for the purpose of assuring a very precise fit between the valve seat and seat during normal operation of the valve device (see column 5, lines 6-11).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Cunningham a "coining" operation during assembly of the valve device prior to normal use for the purpose of assuring a very precise fit between the valve seat and seat during normal operation of the valve device as recognized by Raymond.

Regarding applicants remarks as they apply to the above, the argument that the combination of Cunningham in view of Raymond "would destroy the very functionality of" Cunningham is not well taken.

The combination, as proposed, purports to employ the method of "coining" the valve head and seat surfaces such that they cooperated with a very precise fit. Such an act merely processes the cooperating mating faces of the valve head and seat and in no way functions to deform the "fingers" of Cunningham outside of their elastic limit. That is, while the seat and head surfaces are deformed to provide a precise fit therebetween,

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the elasticity of the fingers, providing for their return to the initial position, is not destroyed.

Additionally, the argument that the seat 6 of Raymond is different than that of Cunningham is factually correct but otherwise moot. In applying the teaching of "coining" as taught by Raymond to the structure of Cunningham, one would perform the "coining" operation on the head and seat of Cunningham. As disclosed in Cunningham, the seat "fingers" return to their initial positions on valve opening regardless of the value of pressure applied in moving the valve to the closed position.

Claims 1-6, 8-16, 18-20 and 22-30 are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Rivell whose telephone number is (571) 272-4918. The examiner can normally be reached on Mon.-Thur. from 6:30am-5:00pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel can be reached on (571) 272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John Rivell
Primary Examiner
Art Unit 3753

j.r.